

[Cite as *State v. D.K.*, 2017-Ohio-7081.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105812

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

D.K.

DEFENDANT-APPELLANT

JUDGMENT:
VACATED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-09-525123-B

BEFORE: S. Gallagher, J., E.A. Gallagher, P.J., and McCormack, J.

RELEASED AND JOURNALIZED: August 3, 2017

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SEAN C. GALLAGHER, J.:

{¶1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. D.K. appeals the trial court's decision that denied a motion to seal the record of his conviction, entered without the benefit of an evidentiary hearing. It is well settled that under R.C. 2953.32(B) the trial court is required to hold a hearing before resolving such a motion. *State v. M.R.*, 8th Dist. Cuyahoga No. 104712, 2017-Ohio-973, ¶ 10, citing *State v. Hamilton*, 75 Ohio St.3d 636, 1996-Ohio-440, 665 N.E.2d 669; *State v. Saltzer*, 14 Ohio App.3d 394, 471 N.E.2d 872 (8th Dist.1984). A trial court must first hold a hearing because, generally, evidence is required in order to make the several determinations under R.C. 2953.32(C)(1)(a) through (e). *Id.*, citing *State v. J.K.*, 8th Dist. Cuyahoga No. 96574, 2011-Ohio-5675, ¶ 15, and *State v. Haney*, 10th Dist. Franklin No. 99AP-159, 1999 Ohio App. LEXIS 5524 (Nov. 23, 1999).

{¶2} The state concedes that error occurred. However, the error was not the trial court's alone. In the brief in opposition to D.K.'s motion, the state asked the trial court to either deny the motion outright or to set the matter for a hearing if the trial court was considering granting the request to seal the record. This appeal could have been avoided had the state presented the trial court with the applicable case law as it did in the appellate brief. *State v. M.L.*, 8th Dist. Cuyahoga No. 105214, 2017-Ohio-2764, ¶ 2.

{¶3} D.K. is entitled to a hearing; therefore, we vacate the order denying his motion and remand for further proceedings consistent with R.C. 2953.32.

It is ordered that appellant recover from appellee costs herein taxed. The
court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common
pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of
the Rules of Appellate Procedure.

SEAN C. GALLAGHER, JUDGE

TIM McCORMACK, J., CONCURS;

EILEEN A. GALLAGHER, P.J., CONCURS IN JUDGMENT ONLY